HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4859 OF 2000.

Rajendra Ramrao Ghosalkar,
S.T.Quarters, Room No.15,
Ramwadi, Pen, Dist: Raigad. ..Petitioner.

Versus.

1. State of Maharashtra
Th: Secretary, Tribal
Development Deptt.,
Mantralaya, Mumbai 32.

2. Chairman, Committee for
Scrutiny & Verification of
Tribe Claims, Maharashtra State,
Nagpur.

3. Maharashtra State Road
Transport Corporation,
Th: Dy. General Manager
(P&IR), Mumbai Central,
Mumbai 400 008.

4. Divisional Controller,
State Transport Raigad Division,
Pen, Dist: Raigad. ..Respondents.

Shri. R. K. Mendadkar for the Petitioner.
Shri. C. R. Sonawane, AGP for respondent No. 1 & 2.
Shri. G. S. Hegade for the respondent Nos. 3 & 4.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : JANUARY 19 & 20, 2006.

ORAL JUDGMENT (PER D.G.KARNIK,J.):

1. Heard learned counsel for the appering parties.

2. By this petition under Article 226 of the Constitution of India the Petitioner challenges the order dated May 19, 2000 passed by the Respondent No.2 - the Committee for Scrutiny and Verification of Tribes Claim (for short, "Scrutiny Committee".) rejecting the claim of the Petitioner that he belongs to "Thakur" tribe, which is a scheduled tribe notified as such by the Constitution (Scheduled Tribes) Order, 1950 (hereinafter referred to as "the Presidential Order.") as amended by the Parliament by the Scheduled Castes and Schedules Tribes (Amendment) Act, 1956 (Act No. 63 of 1956) and further amended by Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108 of 1976).

3. In the enquiry before the second respondent, the Petitioner produced ten documents, including the Primary school Leaving Certifcate of his father Ramrao. Though the school leaving certificate showed that petitioner’s father was a "Thakur" and that entry was made in the year 1948 i.e. prior to the Presidential Order, relying upon the report of the vigilance officer the Scrutiny Committee came to the conclusion that the Petitioner did not belong to Thakur tribe. In the enquiry made by the vigilance officer it was discovered that in

the school register dated 14th July 1978, the caste of Raju Ganpat Gosalkar, the first cousin brother of the Petitioner was recorded as "Bhat". So also the caste of Mangal Ganpat Ghosalkar, first cousin sister of the Petitioner was recorded as "Kunabi" in the school register and that entry was made on July 2, 1970. Report of the vigilance officer also disclosed caste of Anusaya Sampatrao Ghosalkar, another first cousin sister of the peititoner was recorded as "Bhat" in the school Register the said entry was made on July 5, 1971. The scrutiny committee was of the view that these adverse entries in the school registers, as disclosed from the report of the vigilance officer, were not properly explained by the Petitioner. Therefore, the scrutiny committee came to the conclusion that the Petitioner did not belong to the "Thakur" tribe.

4. Shri. Mendadkar, learned counsel for the Petitioner submits that the entries relating to the two cousin sisters and the cousin brother of the petitoner were made in the years 1970 to 1978, i.e. long after the issuance of Presdential Order of 1950. Relying upon the decision of **Kumari Madhuri Patil & Ano. v/s. Addl. Commissioner, Tribal Development & Ors. reported in AIR-1995 SC 94,** he submits that

entries in the school register made after the Presidential Order are not relevant and have to be ignored. Therefore, he submits the three adverse entries should have been ignored altogether by the Scrutiny Committee and only the entries which were made prior to the Presidential Order and which were favourable should have been considered. We are unable to agree with the proposition that post Presidential Order adverse entries are required to be ignored completely for the reasons mentioned below.

5. Article 15 of the Constitution of India prohibits the State from discriminating between the citizens on the ground of religion, race, caste, sex or place of birth but clause (4) thereof permits the State from making any special provision of advancement of socially and educationally backward classes of citizens or scheduled castes and scheduled tribes. Article 16 of the Constitution of India gives equal opportunity to all the citizens in matters relating to employment or appointment to any office under the State but clauses (4) and (4A) thereof permit the State from making provision for reservation of appointment or posts in favour of any backward class of citizens which in the opinion of

the State are not adequately represented in the service under the State or reservation in the matter of promotion to any class or classes of post in service under the State in favour of the Scheduled castes and Scheduled tribes which in the opinion of the State are not adequately represented in the services of the State. The terms "scheduled castes" and "scheduled tribes" are defined under clauses 24 & 25 of Article 366 of the the Constitution of India to mean such castes, races or tribes or tribal communities or parts of or groups within such castes, races or tribes or tribal communities as are deemed to be such under Article 341 & 342 of the Constitution of India. Article 341 & 342 empower the President of India, after consultation with the Governor of the State, by public notification to specify the castes, races, tribes or other tribal communities or parts of the groups within tribes or tribal communities to be scheduled casts or scheduled tribes as the case may be. Under clause (2) of the Article 341 & 342 of the Constitution of India Parliament has been given a power to make law including or excluding from the list of scheduled castes or scheduled tribes, any caste, race or tribe specified in the notification issued by the President under clause (1) of the Article 341 or 342 of the

Constitution of India. From the reading of the aforesaid provisions, it is clear that though the State is not entitled to discriminate between any citizens on the ground of religion, race, caste, sex or place of birth and is required to afford equal opportunity for all citizens in the matters relating to employment, the State is empowered to make special provisions for advancement of and for reservations in the employment for backward class persons belonging to scheduled castes / or scheduled tribes. Such scheduled castes or scheduled tribes must however be notified by the President of India in the notification issued under Article 341 or 342 of the Constitution of India. The source for claiming of any benefit of reservation is thus the Presidential notification issued under Article 341 or 342 of the Constitution of India. In order to claim the benefit of reservation, a person must belong to a caste or a tribe declared as scheduled caste or scheduled tribe under a notification issued by the President of India under Article 341 or 342 of the Constitution of India. The President of India has promulgated a number of notifications listing the scheduled castes or scheduled tribes i.e. The Constitution (Scheduled Castes) Order, 1950; The Constitution (Scheduled Tribes) Order, 1950; The Constitution (Scheduled

Castes - Part C States) Order, 1951; and the Constitution (Scheduled Tribes - Part C States) Order, 1951 (hereinafter referred to as "the Presidential Orders.") These Presidential Orders have been subsequently modified by Parliament by enacting laws under clause (2) of the Article 341 and 342 of the Constitution of India. The benefit of reservation became available for the first time after the Presidential Orders, to the persons whose castes or tribes were included as scheduled castes or scheduled tribes in the Presidential Orders. Experience has shown that persons belonging to forward castes, in order to grab benefits of reservation in the matter of employment as also reservation of seats in educational institutions, have often claimed that they belong to a scheduled caste or scheduled tribe. Unscrupulous persons falsely declare their and their offsprings' cast at the time of admission to the school and even at the time of making any entry in the Births and Deaths Register to be the one which is declared a scheduled caste or scheduled tribe in any of the Presidential Orders. Prior to the issuance of the Presidential Orders no one could predict for certain which caste or tribe would be declared as a scheduled caste or scheduled tribe and for which area in the

Presidential Orders likely to be issued under Article 341 & 342 of the Constitution of India. Therefore, the occasion to falsely declare ones caste in Births or Deaths Register or in the school register as the one which was notified as a scheduled caste or scheduled tribe arose only after the issuance of Presidential Orders. It is for this reason that the Courts have often attached more probative value to the entries in the Births and Deaths Register or in the school register made prior to the issuance of the Presidential Orders and ignoring post Presidential Notification entries. However, an adverse entry in the birth or school register, i.e. an entry showing the caste of the person or any of his near relatives to be a caste or tribe other than the scheduled caste or a scheduled tribe stands on a different footing. This is because by declaring hiw caste / tribe to be other than a scheduled caste or a scheduled tribe for making an entry in the Births and Deaths Register of a school register, he would not get any benefit of any reservation. On the other hand, he would lose the benefits of reservations. Therefore, there would be no incentive for a person who belongs to a scheduled caste or scheduled tribe to allow his caste to be recorded as a caste other than a scheduled caste or scheduled tribe even after the Presidential

Order. We are therefore of the view that the adverse entries relating to a person and his near relatives like first cousins though made after the Presidential Order, cannot be ignored totally. On the other hand, the said entries would have a probative value, especially because while giving information to the concerned authorities making the entries, the person had the knowledge by declaring his or his offsprings' caste/tribe to be a non-scheduled caste/ tribe he/ his offsprings was likely to be deprived of the benefits of reservation. Unless explained properly, such entries would, in our view, can be considered and relied upon by the Scrutiny Committee.

7. Mr. R. K. Mendadkar then submits that in the school leaving certificate of the Petitioner, a copy of which is annexed at page-19 to the petition, the Petitioner is shown to be a Thakur. He further submits that even in the school register of the primary school, the Petitioner's father (Ramdeo Mahadeo Ghosalkar) is shown to be a to Thakur. Further, the school leaving certificate of Ramrao Mahadeo Ghosalkar (Petitioner's paternal grand -father) also shows that he is a Thakur. Learned counsel also invites our attention to the school

leaving certificates of real brothers of the Petitioner namely, Pradip Ramrao Ghosalkar, Rajendra Ramrao Ghosalkar and Dilip Ramrao Ghosalkar and that of Petitioner's uncle Ganpatrao Ghosalkar whrein their caste/tribe is shown as Thakur. He submits that in some of the registers instead of "tribe", the word "caste" is used but that is inconsequential. Relying upon the decision of the Supreme Court in **Palghat Jilla Thandan Samudhaya Samrakshna Samithi & Anr. v/s. State of Kerala & Anr. reported in (1994) 1 SCC 359 and of this court in Pandurang Rangnath Chavan v/s. State of Maharashtra reported in 1998(1) Mh.L.J. 806,** he submits that the entries in the Presidential Order are final and the State has no power to make any amendment to the said entries. The Scrutiny Committee or the Court has no power to consider whether Thakur is a caste or a tribe and the entry in the Presidential Order is final. He, therefore, submits that the Scrutiny Committee ought to have accepted the entry in the school leaving certificate of the Petitioner showing Petitioner's caste / tribe to be Thakur as final. Similarly, the entry in the school register in respect of the Petitioner's father showing him to be a Thakur should be treated as final and no enquiry ought to have been entertained by the Scrutiny Committee as to whether

Thakur was a caste or a tribe.

8. We have perused the order of the Scrutiny Committee. In our opinion, the Scrutiny Committee has not embarked upon an enquiry as to whether the Thakur is a caste or a tribe. The Scrutiny Committee only enquired into the question whether the Petitioner at all was a "Thakur" i.e., belonged to a Thakur tribe. In our considered view, the Scrutiny Committee was entitled to consider and decide the validity of the claim of the petitioner that he belonged to Thakur tribe. Merely because an entry has been made in the school leaving certificate or even the shcool register showing him or his his father or uncles to be "Thakur", that would not prevent the Scrutiny Committee from enquiring into what is the caste / tribe of the petitioner or his father. If the submission of the learned counsel is accepted, it would mean that an entry in the school register or the school leaving certificate showing that a particular student belongs to a particular caste / tribe would be conclusive and there would be no occasion for the Scrutiny Committee to enquire into the caste/tribe of the claimant.

9. The next question, however, to be considered is whether the Scrutiny Committee erred in coming to the conclusion that the Petitioner does not belong to the Thakur tribe. There were two sets of documents available before the Scrutiny Committee. The first set of documents were school leaving certificate and the entries in the school registers made at the time of the admission of the Petitioner's father, Petitioner's two brothers and the Petitioner himself. Undoubtedly, the entries in respect of the Petitioner and the Petitioner's brothers are made between the years 1970 and 1973. These entries have been made 20 years after the Presidential Order declaring Thakur to be a Scheduled tribe. Therefore, these entries would not be of much assistance to the Petitioner. However, the entry in respect of the Petitioner's father is made earlier than the Presidential Order and would be relevant. The Petitioner's father was admitted to the primary school on August 12, 1950 and left the school on January 20, 1951. The Presidential Order declaring Thakur as a scheduled Tribe was issued in September-1950. The entry of admission of the Petitioner's father to the primary school made in August-1950 precedes the Presidential Order and shows

that he is a Thakur.

10. There is another set of documents which are relied upon by the Scrutiny Committee, namely, the entries in the school register in respect of Raju Ganpat Ghosalkar, Mangal Ganpat Ghosalkar and Anusaya Sampatrao Ghosalkar, the first cousins of the Petitioner. Relying upon those entries in the school leaving certificates and/or school register of Raju and Mangal, children of Ganpat Ghosalkar, and Anusaya, daughter of Sampatrao Ghosalkar, the Scrutiny Committee came to the conclusion that the Petitioner does not belong to Thakur tribe. The entries of Raju and Mangal not only contradict the entry of "Thakur" tribe of the Petitioner but the entries are also contradict themselves, as the caste / tribe of Raju is shown as "Bhat" whereas the caste / tribe of Mangal is shown as "Kunabi". Raju and Mangal are the children of same father viz. Ganpat Ghosalkar, the uncle of the Petitioner. Obviously, the two children cannot have different castes / tribes, one "Bhat" and another "Kunabi". Therefore, either of two or both the entries have to be wrong.

11. The Petitioner's father and uncle appear to be illiterate or barely literate; the Petitioner's father left the school within a few months of admission and the Petitioner's uncle did not go to school. They might not be aware how the school registers are filled in. Furthermore, when the entries are contrary to each other, it was not open to rely upon those entries as gospel truth. One would have to look into the initial admission form filled in at the time of admission to the school and who filled in the forms. The admission form and the information given therein would be the primary evidence. The entries made in the school register on the basis of the information contained in the admission form would only be a secondary evidence of the contents of the form. This primary evidence was not produced before the Scrutiny Committee. As can be seen from the report of the vigilance officer the vigilance officer also has not looked into this primary evidence. No attempt was made by the Scrutiny Committee to look to the primary evidence which was not examined by the vigilance officer.

12. As stated earlier, the entries in respect of two children of Ganpat are contrary to each other,

and do not inspire confidence in us. The Scrutiny Committee would have relied upon the entry of caste / tribe made in respect of the Petitioner's father in the school register at the time of his admission to the school, especially when the said entry was made before the Presidential Order when there was no motive to make a false entry relating to his caste/ tribe.

13. Similarly, we are not inclined to believe the entry in respect of Anusaya, another cousin sister of the Petitioner, wherein her caste is shown as "Bhat" as it is contrary to the entry "Kunabi" made in respect of Mangal, another cousin sister of the petitioner.

14. For these reasons, we are of the view that the Petitioner has proved by sufficient evidence that he belongs to Thakur tribe which is a scheduled tribe under the Presidential Order. The impugned order is, therefore, liable to be set aside.

15. The Petitioner has also prayed for cancellation of the order of termination of his service dated December 11, 2002. The learned counsel for the petitioner fairly submits that since the

petitioner has not worked from September 11, 2000, till today, the Petitioner forgoes the claim for backwages but only claims the continuity of service.

The submission is fair and deserves to be accepted.

16. For the reasons mentioned above, the petition is allowed in terms of prayer clauses (b) & (C-1) of the petition with the modification that the Petitioner shall not be entitled to the backwages from 11th September 2000 till he joins / reports for service. The Petitioner is granted two months time for resuming service.

17. Mr. Hegade learned counsel for the Respondent No.3 undertakes to inform this order to the Respondent No.3.

18. Rule is made absolute to the extent mentioned above. In the facts and circumstances of the case, the parties shall bear and pay their own costs.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**